

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)	
)	OAH No. 11-0127-CSS
J. M. W.)	CSSD No. 001140693
_____)	

DECISION AND ORDER

I. Introduction

The obligor, J. W., appeals a Corrected Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The custodian of record is A. C. P.¹ The obligee child is B. P. W.

CSSD filed a Motion for Summary Adjudication, arguing that the support obligation is currently set at the minimum amount allowed by law. A hearing was held on April 27, 2011. Mr. W., Ms. P., and Child Support Specialist Erinn Brian all appeared by telephone. Because there is no basis for a downward adjustment of Mr. W.'s obligation below \$50 per month, CSSD's motion for summary adjudication is granted.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was entered in 2006, setting Mr. W.'s child support obligation at \$228 per month for one child.² Mr. W. requested a modification of that obligation on February 7, 2011.³ Notice of Petition for Modification of Administrative Support Order was mailed on February 24, 2011.⁴ Mr. W.'s support obligation was modified, and was reduced to \$50 per month effective March 1, 2011.⁵ Mr. W. appealed that decision, raising three points: 1) that he is incarcerated and cannot afford to pay the \$50 per month obligation; 2) that he has had only minimal income since his son was born, and his obligation should have been no more than \$50 per month since the birth of his son; and 3) his

¹ Now known as A. C.
² Exhibit 1, page 1.
³ Exhibit 2.
⁴ Exhibit 3.
⁵ Exhibit 5, page 1.

father has made direct payments to the custodial parent which should be credited against any arrears.⁶

B. Material Facts

There are no material facts in dispute. Mr. W. is incarcerated and is unable to earn any significant amount of income.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." However, even for parents with no income, the minimum amount that can be awarded is \$50 per month.⁸ Because there is no basis for a downward adjustment from this amount, CSSD's motion is granted as to Mr. W.'s ongoing child support obligation.

Mr. W. also argued that his past support obligation was too high. He did not request a modification of that amount until February of 2011, and modification of child support awards may not be retroactive.⁹ The earliest this modification may be effective is the month after the notice of his request for modification has been served on the custodial parent.¹⁰ That date is March 1, 2011, which is the effective date of the order being appealed.¹¹

Finally, Mr. W. asks that his arrears be adjusted based on direct payments made to the custodial parent by Mr. W.'s father. The request for adjustment should be made directly to Mr. W.'s caseworker. Proof of those payments will be needed. It is recommended that any future payments be made through CSSD so the payments can be properly accounted for.

IV. Conclusion

Because there is no factual or legal basis in this case for reducing the child support obligation below \$50 per month, CSSD's motion for summary adjudication is GRANTED.

⁶ Exhibit 6.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ Civil Rule 90.3(c)(3).

⁹ Civil Rule 90.3(h)(2).

¹⁰ *Id.*

¹¹ Because the original child support award appears to be based on a default income amount, Mr. W. could ask that the original order be set aside pursuant to AS 25.27.195(b). He would need to file a separate request with CSSD, asking it to take that action.

V. Child Support Order

- Mr. W.'s child support obligation remains at \$50 per month for one child, effective March 1, 2011;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 15, 2011 remain in effect.

DATED this 2nd day of May, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of May, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

[This document has been modified to conform to the technical standards for publication.]